

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

VFS LEASING CO.,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 3:06cv638-SRW
)	(WO)
G. F. KELLY, INC. d/b/a)	
KELLY TRUCKING; and GUY KELLY,)	
)	
Defendants.)	

ORDER

This action is presently before the court on the Rule 56(f) motion filed by defendants on November 30, 2006 (Doc. # 13) seeking an extension of time until January 31, 2007 to respond to plaintiff's pending motion for summary judgment.¹ Upon consideration of the motion, and plaintiff's response in opposition filed on December 1, 2006 (Doc. # 14), it is

ORDERED that the motion is GRANTED.² Plaintiff may file its reply brief within eleven days after defendants' response is filed.

¹ Under the briefing schedule established by the court's previous order, defendants' response is presently due on December 18, 2006.

² Plaintiff argues that it "had no duty to sell the repossessed equipment, let alone sell the repossessed equipment in a manner that meets the U.C.C.'s requirements for a commercially reasonable sale." (Doc. # 14, pp. 2-3). However, plaintiff did, in fact, sell the equipment and now seeks recovery pursuant to the liquidated damages provision in the contract which applies upon such sale by the lessor. (See Exhibit E to Craver aff.). It appears to the court that this provision is not "a formula that is reasonable" as required by N.C. Gen. Stat. § 25-2A-504(1) absent an implied duty of mitigation – *i.e.*, to sell at a commercially reasonable price – and thus, that the discovery sought by defendants is relevant to this action.

DONE, this 4th day of December, 2006.

/s/ Susan Russ Walker

SUSAN RUSS WALKER
UNITED STATES MAGISTRATE JUDGE